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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.L.P. 685/2019**

STATE

..... Petitioner

Through: Ms Meenakshi Chauhan, APP for
State with SI Amit Kumar, PS
Kalyanpuri.

versus

VISHAL & ORS.

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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10.12.2019

CRL.M.A. 42276/2019

1. For the reasons stated in application, the delay in filing is condoned.
2. The application is disposed of.

CRL.M.A. 42277/2019

3. Allowed, subject to all just exceptions.

CRL.L.P. 685/2019

4. The State has filed the present petition impugning an order dated 22.08.2019 passed by the learned ASJ rejecting the prosecution's case against the respondents for conviction under Sections 308/34 of the IPC. However, the respondents have been convicted of an offence under Section 323/34 of the IPC. The said case arises from FIR No.1029/2015 under Sections 308/323/34 of the IPC, registered with PS Kalyanpuri.
5. The said FIR was registered at the instance of one Sonu (hereafter 'the

complainant'). It is stated that on 27.10.2015 he had been beaten by the respondents. He stated that on account of the injury suffered by him, he had become unconscious and was taken to hospital (LBS Hospital). The complainant's brother Sarvesh @ Sarvinsh was also beaten by the respondents (accused).

6. On receiving the report of the incident, SI Sandeep Kumar reached the spot of the incident (Block No.18, Parking Kalyanpuri) and was informed that the complainant had been rushed to hospital (LBS Hospital). He then went to the hospital but the complainant was unconscious and was not in a condition to record his statement.

7. The complainant and his brother did not give any reason as to why the respondents had attacked him. However, it is the respondents' case that the complainant and his brother had teased the sister of respondent no.5. They allege that on being accosted, there was a scuffle and the respondents had also suffered injuries.

8. The Trial Court had evaluated the evidence obtaining in the present case and had found that the injuries suffered by the complainant and his brother were simple. There was also little evidence to establish that any weapon had been used by the respondents in inflicting the said injuries.

9. In view of the above, the Trial Court had concluded that the question of committing an offence punishable under Section 308 of the IPC did not arise, as there was no evidence to establish that the respondents had assaulted the complainant and his brother with the intention and knowledge that their assault could cause death.

10. This Court finds no infirmity with the aforesaid conclusion. The evidence in the present case indicates that the complainant had suffered a

simple injury on his neck and his head. However, there is little evidence to hold that the said injury was inflicted by any weapon. The Trial Court had also noticed that the injuries caused were singular this did not indicate any intention or knowledge that the injuries would result in any fatality.

11. Nonetheless, since the Trial Court had concluded that the complainant and his brother had suffered simple injuries, which were voluntarily caused by the respondents; the respondents were convicted of an offence punishable under Section 323 of the IPC.

12. Undisputedly, the conclusion drawn by the Trial Court is a plausible one and therefore, this Court finds no compelling reason to interfere with the same.

13. The petition seeking leave to appeal against the impugned judgment is, accordingly, dismissed.

VIBHU BAKHRU, J

DECEMBER 10, 2019
MK